Supreme Court, U.S.
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No. 85-2159

In The
Supreme Court of the United States
October Term, 1985

ALPHONSO THOMPSON,
Petitioner,

v.

THE HOUSING AUTHORITY OF THE CITY OF LOS ANGELES, a public corporation; and MICHAEL H. SALZMAN,
Respondents.

MEMORANDUM IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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I

SUMMARY OF THE CASE

The Petition of Alphonso Thompson is directed to the Decision of the United States Court of Appeals, for the Ninth Circuit, which affirmed the dismissal of the action with prejudice for failure to comply with pretrial orders and rules of the District Court. The Court of Appeals for the Ninth Circuit held that the Trial Court did not

abuse its discretion in dismissing the action or in denying relief from operation of the judgement.[1]

The case originated with a complaint filed by Alphonso Thompson, concerning his termination from employment with The Housing Authority of the City of Los Angeles.

On January 26, 1984, the District Court issued a Pretrial Order, scheduling the Pretrial Conference for June 4, 1984. At the Petitioner's request, the Pretrial Conference was continued to July 16, 1984. (District Court Memorandum Order of Dismissal, Petition, page 26.)

Pursuant to the local rules for the Central District of California, Thompson was required to prepare a Pretrial Conference Order and lodge with the clerk of the court seven days before the conference. (*Thompson v. Housing Authority of the City of Los Angeles* (9th Cir. 1986) 782 F. 2d 829, 830.) Thompson failed to comply with this rule. (*Id.;* District Court Memorandum Order of Dismissal, Petition at page 26.)

At the Pretrial Conference on July 16, 1984, the court continued the Pretrial Conference to August 13, 1984, as no order had been lodged. (*Thompson, supra,* at page 831.) The court also issued an order directing Thompson to show cause why the action should not be dismissed for his failure to prepare for the Pretrial Conference. (*Id.*)

At the August 16, 1984 Pretrial Conference, Thompson had again not lodged a proposed Pretrial Conference

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[1]U.S. Supreme Court Rule 28.1 not applicable as the Housing Authority is a public corporation.

Order and was again not ready to proceed. (*Id.*) Mindful of the consequences of dismissal, the court granted Thompson one final opportunity to prepare for pretrial. (District Court's Memorandum Opinion of Dismissal, Petition, Page 27.) The court extended the discovery cutoff to September 13, 1984, and continued the Pretrial Conference to October 15, 1984. (*Id.* at page 28; *Thompson, supra,* at page 831.) The court also specifically warned Thompson's counsel that "I will give you one more chance . . . . If you are not ready the next time, I will dismiss the case." (*Thompson, supra,* at page 831.)

Thompson failed to comply with the local rules for the Central District of California and this Specific Order of the court and at the October 15, 1984 Pretrial Conference, the court dismissed the action for Thompson's failure to comply with the local rules, Federal Rule of Civil Procedure, Rule 16, and the court's specific order. (*Id.*)

On appeal, the Ninth Circuit Court of Appeals affirmed the dismissal, holding that the trial court did not abuse its discretion in dismissing the action, or in denying relief from the operation of judgement under Federal Rule of Civil Procedure 60. (*Thompson v. Housing Authority of the City of Los Angeles* (9th Cir. 1986) 782 F. 2d 829.)

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II

REASONS FOR DENYING THE WRIT

The petition raises no issues which merit a Writ of Certiorari.

1. The first issue raised in the petition requests this court to make a factual determination as to whether petitioner, "in fact, failed to comply with the court's order to be ready for pretrial on October 16, 1984, . . . ". (Petition, page 2.) The petitioner is seeking a readjudication of the facts and such a question is not of the character of reasons that should be considered by this Court pursuant to rule 17.1. (U.S. Sup. Ct. Rule 17.1, 28 U.S.C.A.)

2. The second question raised by the petition is similarly flawed. This question requires this Court to make the factual determination as to whether respondents were "substantially culpable" for "unreasonably refusing to sign [the Pretrial Conference Order]." (Petition, page 3.)

As is true of the Petitioner's first issue, this issue does not merit review on Writ of Certiorari pursuant to this court's Rule 17. (*See* U.S. Sup. Ct. rule 17.1, 28 U.S.C.A.) In fact, both issues 1 and 2 of the petition are moot, as the Court of Appeals for the Ninth Circuit was able to render its decision without considering the appropriateness of a dismissal with prejudice for technical deficiencies in a party's attempt at compliance with the local pretrial rules, as is stated in footnote 1 of that court's decision. (*Thompson v. Housing Authority of the City of Los Angeles* (9th Cir. 1986) 782 F. 2d 829, 831, fn. 1.)

3. The third issue raised in the petition, is still another restatement of the same issue eluded to in questions 1 & 2, *i.e.*, whether the district court's dismissal of the action for petitioner's failure to comply with local pretrial rules,

Federal Rule of Civil Procedure 16, and the specific order of the District Court, raises an issue of public importance. This petition raises no such issue.

The petition concerns itself with the very limited question, of pertinence only to the petitioner and his Attorney of Record. Petitioner states that "there are many reported cases on the subject of dismissal for failure to comply with court rules, . . . ", and that "there is a split of authority on the affirming or overruling of such cases." (Petition at page 11.) Yet petitioner cites no such cases. Petitioner goes on to state that "no case has been found by counsel that has considered the question raised in the instant case." (Petition at page 11.)

If by that sentence petitioner means that there are no reported cases by this Court addressing the issues raised in the petition, then petitioner is correct as the issues raised by the petition are not of the character of reasons that should be considered by this court for certiorari pursuant to rule 17.1. (See U.S. Sup. Ct. Rule 17.1, 28 U.S.C.A.)

As to the propriety of the District Court's action in dismissing the case and denying the motion for relief under Federal Rule of Civil Procedure 60, ample authority is cited in the opinion of the Ninth Circuit, 782 F. 2d, 829, a copy of which petitioner has included in his petition beginning at page 14.

This case, in fact, involves no dispute among the circuits, nor a dispute between a federal court and a state court of last resort; nor does it involve a departure from the accepted and usual course of judicial proceedings. This case has no prospective application and is of such isolated significance, that it should not be before the Su-

preme Court. The concluding statement of this Court in *Rice v. Sioux City Memorial Park Cemetery,* 349 U.S. 70, 75 S. Ct. 614 (1955), is dispositive of the petition before the court and compels its denial. The Court stated:

> ". . . it is very important that we be consistent in not granting the Writ of Certiorari except in cases involving principles the settlement of which is of importance to the public, as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the Circuit Courts of Appeals.' Layne & Bowler Corp. v. Western Wells Works, Inc., 261 U.S. 387, 393, 43 S. Ct. 422, 423, 67 L. Ed. 712.
>
> "Writ of Certiorari dismissed." (349 U.S. at 79, 75 S. Ct. at 619-620).

III

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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